



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MND, MNR, MNSD, MNDC, FF*

### **Introduction,**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income, cleaning, repairs and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

This dispute was initially heard on December 14, 2012 and adjourned to January 23, 2013 and then again to this date – February 21, 2013, to allow the parties more time to present evidence.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, cost of cleaning and repairs and for the filing fee?

### **Background and Evidence**

The tenancy started in July 2009 and ended on July 31, 2012. Rent was \$1,720.95 and was due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$825.00. The rental unit consists of a two level house.

The tenant provided the landlord with notice to end the tenancy by email on July 03, 2012. Move in and move out inspections were conducted and the landlord filed copies of the reports. The move in inspection report indicates that some items including the drapes, carpets, oven and dishwasher were new, the shower was to be rebuilt and the tenant would install his own washer and dryer. The work to rebuild the shower was completed shortly after the tenant move in.

The move out inspection report indicated a lot of damage done by the tenant's dog, a strong odour of smoke inside the rental unit, damage to the walls, stains on the carpet, damage to the deck, bags of garbage left behind, damage to doors etc. The rental unit was also left in a dirty condition.

The landlord filed photographs that depict the condition of the rental unit and support the details noted on the move out inspection report. The tenant refused to sign the move out inspection report. The tenant also stated that the move in inspection report was not signed by him and that the landlord had forged his signature. The landlord referred to various other documents signed by the tenant like returned rent cheques and the tenancy agreement for use in comparing the signatures.

I have looked at the signatures and to the best of my knowledge of signature comparison; I find that the signatures are close enough. I informed the tenant that he has the option of pursuing other avenues if he wants to follow up on his complaint and/or charges against the landlord of alleged forgery.

The landlord stated that in March 2012, the tenant complained about a stain on the laundry room ceiling and suggested that it might be mould. The landlord requested an appointment to visit the rental unit and the tenant informed the landlord that he needed some time to clean the house. The landlord conducted a site visit on April 05, 2012 and found significant debris around the house including a lot of dog droppings.

In May 2012, the tenant again informed the landlord of water damage to the ceiling of the laundry room. The landlord contacted a reputable home service company to inspect the damage and carry out the repairs.

On June 20, 2012, the landlord served the tenant with a ten day notice to end tenancy for non payment of rent. The tenant paid rent two days later, on June 22, 2012.

On July 01, 2012, the tenant informed the landlord by email that an upstairs toilet had overflowed while no one was at home. The landlord asked the tenant for details but did not hear back. On July 03, the tenant gave the landlord notice to end the tenancy. Again the landlord requested information on the overflowing toilet and did not hear back. On July 05, 2012, the landlord received a report from the home service company that there was no mould in the ceiling of the laundry room and that the problem was due to the faulty hook up of the dryer hose to the vent. The contractor also stated that there was no evidence of a leak from the upstairs toilet.

The tenant stated that house was in poor condition at the start of the tenancy and that some of the damage was from the dog of the previous tenant. The tenant also stated that the dryer hook up was already installed and he simply attached the hose of his dryer to the hook up.

The tenant agreed that he left behind some unwanted items, but argued that the some of the items like the tree branches and an appliance were the responsibility of the landlord and therefore the landlord should bear the cost of disposal of these items.

The tenant stated that the house is 38 years old and therefore the landlord had to use the services of a hazmat team while doing repair to the ceiling. The tenant stated that the pipes in the house were faulty and leaked. He provided photographs to support his testimony. The photographs do not support the tenant's testimony. They show wooden structures around the pipes that are free of water stains.

The tenant also argued that he gave the landlord notice to end the tenancy at the landlord's request and therefore was not responsible for the loss of income suffered by the landlord. The landlord stated that it took him and his spouse 17 visits to clean up and restore the unit to a condition in which it could be rented.

The landlord stated that he advertised on a popular online site and five times in the local newspaper starting mid August, but was unable to find a tenant for September as the unit needed a lot of repair and cleaning. A new tenant was found for October 2012. The landlord is claiming loss of income for the months of August and September.

The landlord is claiming the following:

1.	Trash Removal	\$1,120.00
2.	Cleaning service	\$270.00
3.	Paint supplies	\$1,181.88
4.	Painting	\$2,037.20
5.	Carpet Shampoo	\$406.56
6.	Carpet Replacement	\$1,377.82
7.	Hydro	\$45.37
8.	Lawn cutting	\$80.00
9.	Drapes	\$140.47
10.	Hardware supplies	\$1,130.91
11.	Ceiling Repair	\$10,060.43
12.	Personal work hours 108 hours @ \$25.00	\$2,700.00
13.	Loss of income for August and September 2012	\$3,500.00
14.	Filing fee	\$100.00
	Total	<b>\$24,150.64</b>

## **Analysis**

Based on the documentary evidence before me and the oral testimony of both parties I find as follows:

1. Trash Removal - \$1,120.00
2. Cleaning Service - \$270.00

The landlord is responsible for some of the trash disposal costs and therefore I award the landlord \$900.00 towards his claim. The landlord has filed photographs and a receipt for the cost of cleaning. Based on this documentary evidence, I find that the tenant left the unit in a dirty condition and therefore the landlord is entitled to the full cost of cleaning.

3. Paint supplies - \$1,181.88
4. Painting - \$2,037.20

The landlord has filed photographs and invoices to support his claim for the cost of painting and painting supplies. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting. As per this policy, the useful life of interior painting is four years. The landlord painted the rental unit in 2009 and therefore by the end of the tenancy in July 2012, the painting had one year of useful life left. Accordingly I find that the landlord is entitled to \$804.77 which is the prorated value of the remainder of the useful life of the painting.

5. Carpet shampoo - \$406.56

The landlord has filed a receipt for the cost of carpet cleaning. I find that the landlord is entitled to this claim.

6. Carpet replacement - \$1,377.82

The landlord is claiming \$1,377.82 for the replacement of a carpet in the recreation room. The landlord agreed that this carpet is at least ten years old. Based on Section 40 of the *Residential Tenancy Policy Guideline*, the useful life a carpet is 10 years and therefore by the end of the tenancy, the carpet had outlived its useful life. Accordingly the landlord's claim for the cost of replacing the carpet is dismissed.

7. Hydro - \$45.37

The tenant agreed that he owed \$45.37 for the cost of utilities.

8. Lawn cutting - \$80.00
9. Drapes - \$140.47

Based on the evidence filed by the landlord, I find that he is entitled to his claim of \$80.00 for the cutting of the lawn and \$140.47 to replace the drapes.

10. Hardware supplies - \$1,130.91

The landlord has filed receipts for the purchase of hardware supplies to repair and replace broken bifold doors, tracking, damage by the dog to the sun deck and doors, missing knobs etc. Based on the receipts, the oral testimony of both parties and the photographs, I find that the landlord is entitled to his claim for hardware supplies.

11. Ceiling Repair - \$10,060.43

The landlord has filed copies of letters from the company that fixed the damage stating that the cause of damage was the improper installation of the dryer hose. The landlord stated that the cupboards in the laundry room were removed to enable the removal of the ceiling. The repair work consisted of three elements, electrical, plumbing and drywall. The landlord has not provided a breakdown of individual costs.

The house is 38 years old. The repair consisted of extensive work to the plumbing and electrical systems. Based on the testimony of both parties, I find that it is more likely than not that the tenant improperly installed the dryer hose. However, I'm not sure that the moisture from the dryer would cause over ten thousand dollars worth of damage to the drywall, the electrical and plumbing systems. Accordingly, I award the landlord a portion of the cost of repairs. This is an arbitrary amount and is based on the age of the home and the damage from the improper venting, caused mainly to the drywall. Accordingly I award the landlord \$2,500.00 towards his claim.

12. Personal work hours 108 hours @\$25.00 - \$2,700.00

The landlord is also claiming \$2,700.00 towards the cost of his time spent cleaning and preparing the unit for the next tenant. The landlord filed a receipt for cleaning services used prior to the start of this tenancy and based on the amount of that invoice and the award already made for cleaning, I award the landlord \$750.00 towards his time spent to clean and repair.

13. Loss of income for August and September 2012 - \$3,500.00

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant did not give the landlord adequate notice to end the

tenancy, thereby causing the landlord to suffer a loss of income for August. When a landlord is claiming damages, the landlord has a legal obligation to do whatever is reasonable to minimize the loss. This duty is commonly known in the law as the duty to mitigate. Based on the testimony and documents filed into evidence by the landlord, I find that the landlord advertised the availability of the rental unit and therefore I find that the landlord is entitled to recover this loss of income for the month of August.

The landlord is also claiming a loss of income for September based on the amount of time it took to restore the rental unit to a condition in which it could be re-rented. Upon review of the receipts the major work that involved the repair of the ceiling was completed in the first week of August. Most of the receipts were dated early to mid August and therefore I find on a balance of probabilities that the loss of income suffered by the landlord in September is more likely than not due to factors other than the time it took to restore the unit to a rentable condition. Accordingly I find that the landlord is not entitled to a loss of income for September.

14. Filing fee - \$100.00

The landlord has proven his claim and is entitled to the recovery of the filing fee.

Overall the landlord has established the following claim:

1.	Trash Removal	\$900.00
2.	Cleaning service	\$270.00
3.	Paint supplies	\$804.77
4.	Painting	\$0.00
5.	Carpet Shampoo	\$406.56
6.	Carpet Replacement	\$0.00
7.	Hydro	\$45.37
8.	Lawn cutting	\$80.00
9.	Drapes	\$140.47
10.	Hardware supplies	\$1,130.91
11.	Ceiling Repair	\$2,500.00
12.	Personal work hours	\$750.00
13.	Loss of income for August and September 2012	\$1,720.95
	Filing fee	\$100.00
	<b>Total</b>	<b>\$8,849.03</b>

Overall the landlord has established a claim for \$8,849.03.

I order that the landlord retain the deposit of \$825.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$8,024.03. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$8,024.03**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 21, 2013.